

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-050

ELIZABETH LITTLEJOHN

APPELLANT

FINAL ORDER
SUSTAINING HEARING OFFICER'S
VS. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF CORRECTIONS
J. MICHAEL BROWN, APPOINTING AUTHORITY

APPELLEE

** ** *

The Board at its regular November 2014 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated October 8, 2014, having noted Appellant's exceptions, Appellee's response, oral arguments and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 19th day of November, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Edward Baylous
Hon. Michael Boylan
Bobbie Underwood

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-050**

ELIZABETH LITTLEJOHN

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VS.

**FINDINGS OF FACT, CONCLUSION OF LAW
AND RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF CORRECTIONS
J. MICHAEL BROWN, APPOINTING AUTHORITY**

APPELLEE

** ** ** ** **

This matter came on for an evidentiary hearing on August 26, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Elizabeth Littlejohn, was present at the hearing, and represented by the Hon. Michael Boylan. Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and was represented by the Hon. Edward Baylous. Also appearing as Agency representative was Warden Don Bottom.

BACKGROUND

1. This matter involves the demotion of the Appellant, Elizabeth Littlejohn, from Corrections Unit Administrator to the position of Classification Treatment Officer, pursuant to letter dated February 10, 2014 and February 12, 2014 (amended). This action resulted in a salary reduction from \$2,810.08 to \$2,669.58 monthly. The amended letter is attached hereto as **Recommended Order Attachment A**.

2. More specifically, the Appellant is alleged to have violated various provisions of Corrections Policies and Procedures and Northpoint Training Center policies by developing a relationship between a staff and offender other than that necessary in the normal conduct of business.

3. The burden of proof was placed upon the Appellee by a preponderance of the evidence to show that the demotion herein was proper under all surrounding circumstances and was neither excessive nor erroneous.

4. The Appellee first called **Krystal Brown**. She testified that while working at Northpoint Training Center (NTC) during the time in question herein, she was an Office Support Assistant II. She shared an office with the Appellant and considered herself a close friend with the Appellant and her family.

5. Appellee's next witness was **Mendalyn Cochran**. She testified that she has been employed at NTC as a Corrections Unit Administrator II (CUA) for approximately three years. The witness explained that CUAs are responsible for overseeing "A" Unit, "B" Unit, a Special Management Unit, and a Parole Unit. This witness was the lead administrator over the "A" Unit during the time of the investigation detailed herein. She also explained that the "A" Unit contains dormitories denominated as "1," "2," and "3." The Appellant was her Assistant Administrator over the "A" Unit.

6. The witness also testified that Unit B contained dormitories denominated as "4," "5," and "6."

7. The witness testified that her office was in Unit A and was one of two offices. She detailed that the front office, upon entering the unit was filled by the Appellant and Krystal Brown. This witness' office was in the back of the unit and access was had through the front office.

8. The witness then detailed that her responsibility as Unit Administrator included overseeing security, safety, sanitation, classifications and bed moves which were carried out in Unit A. She then went on to explain that in November 2012, the Appellant had been promoted from a Classification Treatment Officer (CTO) to Assistant CUA. In this job, the Appellant functioned basically as a liaison with the inmates and her responsibilities also included supervising the CTOs. She also stated that the inmates were supposed to go to their individual caseworkers first before attempting to see the Assistant CUA or the CUA with help for their concerns.

9. The inmate involved herein with the Appellant's troubles was James Hinkle. Hinkle was assigned to Dorm 3 at the time the Appellant was promoted to Assistant CUA. Later, on February 11, 2013, he was transferred to Dorm 4 in Unit B. In 2012, prior to her being promoted, the Appellant was Hinkle's primary caseworker. After the Appellant was promoted from CTO to CUA, Hinkle's caseworkers then included Rachael Tuggle, Ricardo Aranda, Jamie Moreland, and James Smith.

10. Ms. Cochran also testified that Hinkle was an inmate whom she described as needy and always around. She acknowledged that she had discussions with the Appellant, during which the Appellant told her that Hinkle was always around and talked to them (Littlejohn and Brown) too much. The witness also stated that the Appellant never requested of her to have Hinkle moved out of Dorm 3, even after her first complaint regarding him which was at the end of 2012. As stated previously, Hinkle was transferred from Dorm 3 to Dorm 4 effective February 11, 2013.

11. The witness then introduced Appellee's Exhibit 4, a series of information reports from her regarding her observations of the Appellant and James Hinkle at various times. These reports were dated February 15, March 6, and April 18, 2013.

12. The February 15 report details that an inmate, Ronnie Jones, had come to the Unit A office and told this witness he had brought a book on Moral Recognition Therapy (MRT) from Hinkle to the Appellant. He informed this witness that Hinkle wanted the book returned to him because it had a note in it addressed to the Appellant. A second February 15 information report compiled by this witness details her observing inmate Hinkle in the Unit A tunnel talking with the Appellant. This further details that Hinkle had originally come there to see another Correctional Officer. The witness' report also mentions that a few minutes later, Hinkle and the Appellant again meet for approximately a minute and talked in the tunnel.

13. The March 6, 2013 information report from this witness details that another inmate informed her that he almost caught Hinkle and the Appellant in her office having inappropriate relations. [**Hearing Officer note:** It is the Hearing Officer's observation that inmate McIntosh was expressing his own opinion, not necessarily based on fact, as to what was actually occurring in the conversations between Hinkle and the Appellant.]

14. The Appellee's next witness was **Tracy Nietzel**. She has been employed at NTC for approximately the past three years as a Lieutenant in the Internal Affairs Office. Prior to this position, the witness worked as a Shift Supervisor and Yard Supervisor.

15. The witness conducted the investigation into allegations involving inappropriate and unprofessional activity between the Appellant and inmate Hinkle. She introduced Appellee's Exhibit 5, her Internal Affairs Case Report 14-0001.

16. The witness testified that she had begun to hear rumors of some type of relationship between the Appellant and Hinkle. She stated that her investigation of these activities began in January 2013, following receipt of a report from Captain Beasley on January 18, 2013, in which he related that he had seen Hinkle and the Appellant talking in the tunnel and that he seemed to be waiting for her. He added that something did not seem right. Nietzel then explained that she had received a report from Officer Westerfield on February 8, 2013, in which he claimed that Hinkle came to the Appellant's office almost daily and that he "had it bad for her." The next report this witness received was February 15, 2013, wherein Cochran had issued a disciplinary report to inmate Hinkle for being in the wrong unit. She also added that she had seen him talking to the Appellant on this date.

17. The witness testified that after receiving these reports, she placed a hidden camera in Unit A on March 13, 2013, so as to observe the activities going on in the Appellant's office. The witness then elaborated that she had received an April 1, 2013 report from Lt. Harris stating that the Appellant had brought in a pair of shoes for inmate Hinkle. This witness could not establish if that was true. This was followed by a April 18, 2013 report from Lt. Rawlings

detailing that he observed a mirror on the Appellant's desk and when asking her where it came from, she indicated she did not know. He felt this was a gift that should have been reported.

18. On May 9, the Appellant herself furnished a report involving Hinkle which stated that she had been informed a letter was addressed to her and deposited in the Control Center, which she felt was unusual.

19. Following her reviews of video footage from the hidden camera, this witness was able to state that over a period of time she observed Hinkle in the Appellant's office often. She stated that he was there much more than any other inmate, but was rarely there when Mendalyn Cochran was in the office.

20. She then went on to explain that Unit A has three dorms, with approximately 180 inmates per dorm. She again reiterated that Hinkle was in the office of Unit A more often and stayed longer than other inmates.

21. The witness then commented on the Prison Rape Elimination Act (PREA). She explained that this is a mechanism which governs the prison staff's duty to protect staff and inmates from assault and sexual relationships. Pursuant to this Act, she testified that inmates have no authority to consent to a sexual relationship. She then added that it did not seem appropriate for the Appellant to have spent long periods of time talking to an inmate.

22. Nietzel then explained that her investigation had been conducted from January through June 2013. She stated that her investigation had shown no evidence of a sexual relationship between Hinkle and the Appellant, but one which violated policies regarding horseplay and joking around on a daily basis. She opined this was a type of inappropriate relationship in a correctional environment.

23. Regarding the video surveillance, the witness showed footage from the dates of June 3, June 14, and July 31, 2013. The June 3 video showed the timeframe of approximately one hour beginning at 4:00 p.m. During this time, Hinkle was in the Appellant's office and left approximately 4:00 p.m. He returned at 4:38 p.m. while she was having a phone conversation. At 4:54 p.m. Hinkle was still there.

24. The June 14th footage beginning at 1:00 p.m. shows that at 1:05 Hinkle came into the office, whereupon he took something from the Appellant's lap and removed pens from her hair twice. He left at 1:13 p.m. During this interval in the office, there appeared to be an incident of horseplay where Hinkle pretended to "slap" the Appellant and she whirled around as if she had been hit.

25. The July 31st footage shows at approximately 12:15 p.m. in the Appellant's office, Hinkle appeared to be holding the door while the Appellant was on the other side of it, thereby preventing her from leaving.

26. As an aside, the witness revealed that the inmate's alias within the prison was "Bookie."

27. The witness then identified a November 21, 2013 report from Lt. Perkins detailing that Hinkle, who was then living in Unit B, was seen on Unit A giving a blue folder to the Appellant and talking to her for approximately ten minutes. Perkins noted that he had been told by a couple of other staff that they felt the Appellant and Hinkle were spending too much time together. The witness then reported that in December 2013, Hinkle had been placed in the Special Management Unit (SMU) because he had been in a fight. Subsequent to the fight, it was noted that the Appellant had picked up Hinkle's property which was lying about. She also explained that she later found out that a blue folder had been given to the Appellant on November 21 by Hinkle containing letters and song lyrics by him about the Appellant. In summary, the witness stated that in her opinion, she felt the relationship between Hinkle and the Appellant was inappropriate because a CUA is not supposed to spend a lot of time with one inmate on a daily basis. After watching the video footage, she felt that the Appellant had not carried on with professional body language, but rather had appeared relaxed and friendly. She also felt there were too many reports from staff about the two people to be ignored.

28. Finally, she believed that Appellant and Hinkle had developed a "friendship." She explained this was inappropriate, because staff were not supposed to get close to an inmate.

29. On cross-examination, the witness confirmed that she had begun in Internal Affairs January 2012, a year before this investigation began. Regarding the mirror which had been reported to be on the Appellant's desk, the witness explained that she had interviewed inmates who worked in the Sanitation Department and they explained that they had made it.

30. Asked to address where a "prohibited" relationship is defined, the witness referred to CPP 3.1, Code of Ethics, Section II., (B)(3)(d), which in pertinent part states: "Developing a relationship between staff and an offender other than that necessary in the normal conduct of business. . ."

31. Again directed to the video footage, the witness admitted that there was no audio contained of any footage. As a result, she was not aware of the substance of any conversation between the Appellant and Hinkle. However, she opined that their actions seemed not to be all involving prison business. Neither was she aware that the Appellant and Krystal Brown had complained to Mendalyn Cochran previously about Hinkle being in their office so much. Neither was this witness aware that Cochran had told the Appellant that Hinkle was "needy" and hung around the office a lot.

32. Regarding those times after Hinkle had been moved from Unit A to Unit B, but reappeared in Unit A (as noted by various reports), the witness admitted that someone in Unit B would have had to give Hinkle a pass in order to come to Unit A.

33. The witness was also asked about video footage which showed that at least once, Hinkle was leaning over the Appellant's desk while she was working on her computer. The witness stated that Littlejohn should have known it was inappropriate for an inmate to have an opportunity to see her computer.

34. The witness also detailed that she had received several anonymous inmate letters, with the common theme being that the Appellant and Hinkle were having sexual relations. One of these letters was actually given to this witness by the Appellant. Regarding the other letters, this witness is not aware whether the Appellant ever saw them.

35. On re-direct, the witness interviewed the Appellant after having reviewed the video footage for a period of time. She submitted that she did not feel any of the Appellant's duties should include practical jokes or pantomiming being slapped. In response, the Appellant informed her that Hinkle had talked with her about his problems, not only in the institution, but those he would face upon being released. This witness does not know whether the duties of Assistant CUA involved listening to inmates' problems. This witness also noted that the Appellant had made a psych referral for Hinkle on July 23, 2013.

36. The witness admitted that the Appellant had told her about the "blue folder" containing notes and song lyrics, explaining that she had taken it from Hinkle and then gave it to another inmate to have it returned to Hinkle.

37. Appellee's next witness was **Jason Perkins**. He has been a Correctional Lieutenant at NTC for approximately two years. He confirmed his November 5 and November 21, 2013 reports which he had given to Internal Affairs. In these, he made mention that inmates had reported to him that something was occurring between the Appellant and Hinkle. Although he saw the two of them talking during which time Hinkle gave her a blue folder, he is not aware of the contents.

38. Appellee's next witness was **Derrick Roberts**. He has been a Correctional Officer at NTC for approximately two years. He related that after Hinkle had been moved to Unit B, he returned to Unit A quite often, where he talked with the Appellant. He also explained that Hinkle gets a library pass, usually daily, but never seems to go into the library. Rather, he appears to be hanging around waiting for the Appellant.

39. This witness was also aware of the fight which resulted in Hinkle being placed in SMU, and states that the Appellant responded after the altercation was over and wanted to make sure that Hinkle's property was returned to him. He claims to be aware of the contents of the "blue folder" and thinks that some of the letters contained the name "Beth."

40. The next witness was **Don Bottom**. He has been the Warden at NTC since October 2012 and is the Appointing Authority. He is the one who made the decision to demote the Appellant. During his correctional career, Bottom has worked as a Correctional Officer, CTO, Deputy Warden twice, and as Warden twice.

41. He explained that Appellee's Exhibit 9, the demotion letter dated February 10, 2014, was amended by Appellee's Exhibit 10, a letter dated February 12, 2014, with the only difference being the salary figures are different.

42. The Warden explained his role in the investigation began when he received notes from inmates and staff concerning possible inappropriate activity. He then referred these to Lt. Nietzel who did most of the video monitoring and performed the investigation. The Warden explained that he had reviewed some of the video footage and from what he saw, it bothered him that Hinkle was allowed to take a pen out of the Appellant's hair. He was also bothered by footage showing Hinkle had pushed Correctional Officer Chansler even though they were playing. He explained that this was an inappropriate use of force by his officer.

43. The witness explained that the basis of his decision to demote the Appellant was based upon his feeling that she had violated Appellee's Exhibit 11, CPP 3.1, Code of Ethics, and Appellee's Exhibit 12, NTC Policy 03-02-01, Prohibited Employee Conduct.

44. As cited earlier in this order, CPP 3.1, Code of Ethics, II.(B)(3)(d) provides in pertinent part it is prohibited to develop a relationship between staff and an offender other than that necessary in the normal conduct of business. As cited in the demotion letter, NTC Policy 03-02-01, Prohibited Employee Conduct, prohibits in pertinent part:

- (4)(c) Having knowledge of, but failing to report illegal or unauthorized activity on the part of inmates, visitors, or staff or failing to report activities that threaten the safety and security of the institution.
- (4)(f) Refusing to cooperate in an official investigation into alleged illegal activities or alleged violations of NTC and the Department of Corrections policies.
- (7)(k) Engaging in any other activity that might endanger the security of staff, inmates or the institution.

45. The witness then went on to explain that any time in prison if an officer seems to be spending too much time with an inmate, this likely will result in notes and complaints from other inmates or even staff.

46. The Warden also related that he expected a CUA, such as the Appellant, to have the judgment to understand boundaries which needed to exist between her and an inmate and expected her to be professional at all times. He further stated that since Unit A had approximately 500 inmates, that he had a problem with a CUA who would spend so much time daily with just one inmate.

47. The Warden also addressed the allegations contained in the demotion letter involving giving false information and having a relationship other than necessary with an inmate. He felt the Appellant had given false information to the investigator, in that she denied there had

been any horseplay occurring between her and Hinkle. He also felt that the horseplay and the pulling of a pen from the Appellant's hair denoted a relationship other than necessary in the normal conduct between an officer and an inmate. This witness felt that after the pen-pulling incident, the Appellant should have called for assistance and written-up the inmate.

48. The Warden also explained that he had found nothing to indicate that the Appellant had taken any disciplinary actions against Hinkle, nor had she filed any disciplinary reports involving his behavior. He felt this lack of action, along with the behavior noted in the video footage, were factors in deciding to discipline her.

49. The witness also testified that he took disciplinary action against the secretary, Krystal Brown, and Officer Chansler by giving them suspensions. Chansler was the officer involved in the horseplay "pushing" incident with Hinkle. He stated that these disciplinary actions were based upon the behaviors he had noted in video footage. He explained that he demoted the Appellant because she was the supervisor and had allowed a culture to develop of horseplay and unprofessionalism and had failed to take corrective action. He stated that the video footage was the biggest single factor in his decision to demote the Appellant.

50. On cross-examination, the Warden explained that he could recall only one other incident at NTC where program staff had been under video surveillance for an excess of five months. That incident had involved a "platonic" relationship which resulted in a correctional officer having resigned.

51. The witness concluded by saying that there was no previous disciplinary history for the Appellant. He also added that at the time of giving this discipline, he was not aware that Mendalyn Cochran had told the Appellant that inmate Hinkle was "needy" and required a lot of time. The Appellee closed.

52. The Appellant, **Elizabeth Littlejohn**, called herself as her first witness. She has a Bachelor's degree in Psychology. She testified that she began employment December 2010 at NTC as a CTO. At the time of demotion, December 2013, her job was Correctional Unit Administrator (CUA I) in Unit A.

53. In that job, she was assigned to the job classification committee and performed Classification Treatment Officer (CTO) duties. This involved some counseling of inmates. She testified that the staffing in her unit was less than adequate and that she had two new Caseworkers who needed training. Prior to her promotion, her unit had been without an assistant Unit Administrator. After becoming a CTO in December 2010, she was then promoted in November 2012 to assistant Unit Director. Her supervisor was Mendalyn Cochran. The witness also added that prior to beginning at NTC, she had previously worked for the Corrections Corporation of America, a private entity, for two years as a CTO.

54. The Appellant addressed the mirror which had been found on her desk and reported to higher-ups. She stated there was an office in the Sanitation Department where the inmates practice engraving on a grinding machine. As part of their practice, they make designs upon their objects, in this case the mirror. She testified that a Correctional Officer gave it to her and that she knew some of her supervisors had seen it previously.

55. She also mentioned that "Bookie" was the name of her husband's dog and was a term of endearment between the two of them. As previously stated, Bookie was also the alias in the prison of James Hinkle.

56. The witness then explained the fight which occurred on December 27, 2013, between Hinkle and another inmate. Appellant testified that she responded upon hearing of the disturbance and picked up a pair of glasses initially, which were on the ground. She explained that she did this so that they would not get broken and have glass which could injure someone. She explained that after a Correctional Officer asked if she was going to pick up the rest of the property, she did so and told him to put it in with Hinkle's property.

57. Rebutting the "blue folder" which has been the subject of testimony previously, the Appellant explained that Hinkle had tried to give it to her so that copies could be made of its contents. Another inmate informed her that no one else would copy it, so she gave it back to that inmate to return to Hinkle.

58. Appellant then explained some of the footage seen on the videos. She explained that the one reason Hinkle spends so much time in her office was that he was a "unit runner." Presumably meaning that he would run errands as needed for her and others. However, she stated that he was a runner for Dorm 2 and not especially for her. She also explained that part of the time he spent in her office was talking about a previous injury and the trauma he was having with his mother. She also stated that she had known Hinkle from when she was a CTO. She added that after his mother passed, Hinkle would often come and talk with her and she tried to help him through his grief.

59. Concerning the allegations that Hinkle would lean over her desk and peer at her computer, thus invading her personal space, the witness explained that in her psychology training, she had been able to develop a "bubble" around her space, so that she could convince herself mentally that no one was invading her own space. She did not feel that Hinkle was invading her space by standing close to her.

60. Regarding the allegations that she often met Hinkle at the library because he had a daily pass there, the Appellant explained that Hinkle was there often, but that a MRT class which she taught was held next door to the library. She also acted as a legal aid liaison at the library, and did not go there to meet Hinkle.

61. The Appellant also explained the incident regarding C/O Chansler and Hinkle in her office, where the video showed pushing back and forth and fake "slapping." She stated that this might look bad, but that in her opinion she had set boundaries.

62. The witness explained the incident wherein Hinkle pulled the pen from her hair. She emphasized that he did not actually touch her, but she admitted she realizes that was not appropriate. Also during her interview with Internal Affairs, she told them that there was "horseplay" occurring when Hinkle held the door shut on her, as seen in the video footage.

63. The Appellant then addressed the allegations in the demotion letter of providing false information. She emphasized that her interview with Internal Affairs was approximately six months after many of these incidents had occurred and that she answered to the best of her ability. She denied there was any type of relationship with Hinkle. She also stated that it might appear that she was spending more time than necessary with Hinkle because he was a "runner" and part of his job caused him to be in her office.

64. She denied any knowledge, as charged, of illegal or unauthorized activity which she failed to disclose. She did admit that it might be perceived that because she failed to report the horseplay pushing and shoving between C/O Chansler and Hinkle. She denied that she refused to cooperate and stated that she answered all questions. Finally, the Appellant admitted that she may have engaged in activity thought of as horseplay once or twice, but did not feel she had endangered the security for herself or other staff.

65. Appellant then introduced her Exhibit 1. This consisted of numerous statements attached to her appeal, which she explained were documents from all staff members that reported what the inmates had told them about her and Hinkle. She emphasized that she had never seen any of the letters or writings supposedly containing her name which were taken from Hinkle. She stated that regarding Hinkle's looking over her shoulder at her computer, that she sometimes uses the screen to explain to inmates the things she is trying to get across to them.

66. Appellant also related that she had sent to supervisor Cochran the letters which she did see concerning the subject matter of Hinkle "f---ing" her. Likewise, she also filed with Cochran a report on the fight in the tunnel which Hinkle had with another inmate. She also added that she had no control over what Hinkle may have written.

67. The witness then explained that she had reported to Cochran some five to six times that Hinkle was in her office too much. She stated that Cochran's response was that she would tell the Deputy Warden, but that Hinkle was not going to be moved.

68. Lastly, the Appellant testified that C/O Chansler and secretary, Krystal Brown, got a three-day and one-day suspension, respectively, for the horseplay pushing and shoving incident.

69. On cross-examination, the witness was then basically unable to answer why she had never taken it upon herself to tell Hinkle to leave her office, nor why she did not write him up in a disciplinary report. She also stated that she has been trained on “fraternization” and that it should not occur with inmates.

70. The Appellant closed.

71. **Mendalyn Cochran** was called by the Appellee on rebuttal. She testified that she had given instructions to the Appellant regarding Hinkle by telling her that she could write him up or could tell Hinkle that he should either go to her (Cochran) or his caseworker. This witness contradicted the Appellant by saying that other than the first time she requested Hinkle’s movement, there was only one other request by Appellant to have him moved. The witness stated that because an investigation was ongoing at that time, she did not do so.

72. The witness also stated that other than the two requests by the Appellant to have Hinkle moved, that he did not report any conflict between herself, other staff, or Hinkle.

FINDINGS OF FACT

1. The Hearing Officer finds video surveillance taken over a period of months does reveal the appearance of more than normal daily contact between the Appellant and inmate Hinkle. This could be reasonably perceived as fraternization and the Appellant acknowledged she was aware this should not occur in a prison setting. This constitutes developing a relationship between staff and offender other than that necessary in the normal conduct of business. This is a violation of CPP 3.1, Section II (B)(3)(d) and constitutes misconduct under 101 KAR 1:345.

2. The June 14, 2013 video footage clearly reveals Appellant allowed Hinkle far too much latitude by permitting him to remove something from her lap and to twice remove pens from her hair. By not reporting this activity, nor writing up a disciplinary report on Hinkle, she failed to report activities which could potentially threaten the safety and security of staff and the institution.

3. The Hearing Officer finds no evidence the Appellant gave false information to anyone during the course of the investigation. Not only was she interviewed several weeks after the beginning of the investigation, the evaluation of her answers necessarily involved a balancing act between other information received.

4. The Hearing Officer finds no violation of NTC 03-02-01(4)(f), in that the Appellant did not refuse to cooperate in an official investigation.

CONCLUSIONS OF LAW

The Hearing Officer concludes as a matter of law that Appellee carried its burden of proof by a preponderance of the evidence. [KRS 18A.095(1) and (22) and KRS 13B.090(7).]

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **ELIZABETH LITTLEJOHN VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2014-050)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

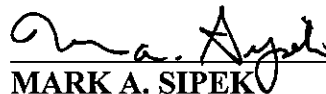
Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer R. Hanson Williams** this 8th day of October, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof mailed this date to:

Hon. Edward Baylous
Hon. Michael Boylan



EXHIBIT

10

DEPARTMENT OF CORRECTIONS

LaDonna H. Thompson
Commissioner

Northpoint Training Center
P.O. Box 479
Burgin, Kentucky 40310
Telephone: (859) 239-7012
Fax: (859) 239-7173

Don Bottom
Warden

February 12, 2014

Amended

Elizabeth Littlejohn
Corrections Unit Administrator

Dear Ms. Littlejohn:

Pursuant to KRS 18A.095, you are advised that you will be demoted for cause from your position as Corrections Unit Administrator to the position of Classification Treatment Officer effective beginning of business February 16, 2014. As a result, pursuant to 101 KAR 2:034, your salary will be reduced from \$2810.10 to \$2676.30.

You are demoted for violation of:

- CPP 3.1, Code of Ethics, Section II, (A), (5), Providing false information to anyone during the course of an investigation shall constitute a violation of the standards of ethical conduct.
- CPP 3.1 Code of Ethics, Section II (B), (3), (d) Developing a relationship between staff and an offender other than that Necessary in the normal conduct of business. An employee shall not become romantically involved with an offender, engage in sexual relations with an offender, or develop a sexual relationship with an offender's immediate family.
- NTC 03-02-01, Prohibited Employee Conduct, (4), (c), Having Knowledge of, but failing to report illegal or unauthorized activity on the part of inmates, visitors, or staff or failing to report activities that threaten the safety and security of the institution.

Recommended Order Attachment A

- NTC 03-02-01, Prohibited Employee Conduct, (4) (f), Refusing to cooperate in an official investigation into alleged illegal activities or alleged violations of NTC and Department of Corrections Policies.
- NTC 03-02-01, Prohibited Employee Conduct, (7), (k), Engaging in any other activity that might endanger the security of staff, inmates, or the Institution.

Misconduct, Specifically, on January 8, 2014, you were interviewed by, Internal Affairs, Lieutenant Tracy Nietzel and Administrative Section Supervisor, Brad Adams, regarding an investigation for inappropriate or unprofessional activity with inmates. During the interview you were advised that you should be honest and cooperate in order to comply with CPP and NTC policy and Procedures. Lieutenant Nietzel and Brad Adams asked you if you were involved with an inmate in any way that was not related to your job. You immediately stated that you were not involved with Inmate James Hinkle#215673, you referred to him as that "Man" but when you spoke of other inmates you referred to them as inmates. You stated that you did not spend any more time with Inmate Hinkle than any other inmate. You denied that you or anyone else was involved in horseplay with any inmate including Inmate Hinkle. You denied ever allowing Inmate Hinkle to touch you or your hair. You also denied that Correctional Officer, Janie Chansler or Office Support Assistant, Krystal Brown, and you were involved with horse play with any inmates. You also stated that you are always professional and appropriate when it comes to inmates and that Krystal Brown and Officer Chansler are as well. You were presented with pictures and information with dates and times that you and Inmate Hinkle met either in the Unit A tunnel or at the Hub to speak. You were advised by Lieutenant Nietzel and Brad Adams of information and pictures of the two of them spending a great deal of time alone talking, smiling and laughing in the Unit Office. You continued to deny and state that you were doing nothing wrong. You were then shown video footage from June 14, 2013 of Inmate Hinkle, Officer Chansler, Krystal Brown, and you in the Unit A office horse playing for thirty-five (35) minutes. You first stated you didn't remember. The footage shows Inmate Hinkle on three (3) occasions touches your hair and removes the pen that was holding your hair up off your shoulders. The video shows that when Inmate Hinkle and you are together, you always have a smile on your face and appear to be having a pleasant conversation. You did admit to horse playing in the Unit Office. You then stated that you didn't think you did anything wrong. You stated that you probably have joked around with and horse played with just about every inmate. You stated that you knew it was wrong to act that way and also to


allow your staff to act that way. You stated it was your fault and that you told them to engage in horseplay with inmates. You stated that you know that you failed as a Supervisor especially due to your behavior.

As a supervisor and an employee of the Department of Corrections, it is incumbent upon you to accurately perform your job duties at all times and to lead by example. Your actions do not conform to the ethical standards of the Department of Corrections and cannot be tolerated. Failure to improve in your conduct may lead to further disciplinary action taken against you, up to and including dismissal.

For your information, the Kentucky Employee Assistance Program (KEAP) is a voluntary and confidential assessment and referral service for state employees. This service may help you with any personal problems that may be affecting your job performance. KEAP can be reached at (800) 445-5327 or (502) 564-5788.

In accordance with KRS 18A.095, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the date notification is received. Such appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

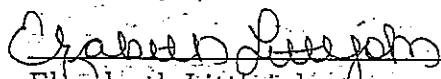
Sincerely,


Donald Bottom
Warden

Attachment: Appeal Form

cc: Tim Longmeyer, Secretary- Personnel Cabinet
LaDonna Thompson, Commissioner- Department of Corrections
Jim Erwin, Deputy Commissioner-Office of Adult Institutions
Stephanie Appel, Director-Division of Personnel
Personnel File

I have received a copy of this notice.


Elizabeth Littlejohn

2/12/14
Date